

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re)	
)	Case No. 18-05665
Curae Health, Inc., <i>et.al</i> ¹ ,)	Chapter 11
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
)	Jointly Administered
Debtors.)	
)	Hearing: May 9, 2019 at 9:00 a.m.

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: May 3, 2019.
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: May 9, 2019, 9:00
a.m., Courtroom 2, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee 37203.**

**MEDHOST’S LIMITED OBJECTION TO DEBTORS’ EXPEDITED MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF NORTHWEST MISSISSIPPI
REGIONAL MEDICAL CENTER FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVING
THE CLARKSDALE APA; (III) AUTHORIZING ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF;
AND OBJECTION TO CLARKSDALE ASSUMPTION AND CURE NOTICE**

MEDHOST of Tennessee, Inc., its wholly-owned subsidiaries, MEDHOST Direct, Inc., and MEDHOST Cloud Services, Inc., formerly known as YourCareUniverse, Inc., sometimes referred to herein collectively as “MEDHOST,” state the following in support of their limited objections to the DEBTORS’ EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF NORTHWEST MISSISSIPPI REGIONAL MEDICAL CENTER FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVING THE CLARKSDALE APA; (III) AUTHORIZING

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); Clarksdale Regional Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); and Clarksdale Regional Physicians, LLC (5311).

ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF (the “Clarksdale Sale Motion”) (Doc. No. 962); and MEDHOST further objects to the “Cure Amount” identified in the Clarksdale Assumption and Cure Notice (defined below) for the cure amounts for defaults under the MEDHOST Agreements (defined below). In support hereof, MEDHOST respectfully states as follows:

1. The Debtors filed the Clarksdale Sale Motion on April 24, 2019. Shortly thereafter, on April 25, 2019, Debtors filed the NOTICE OF: (1) DEBTORS’ INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; AND (II) CURE AMOUNTS RELATED TO THE FOREGOING (“Clarksdale Assumption and Cure Notice”) (Docket No. 970). An Expedited Order scheduling a hearing on the Clarksdale Sale Motion and setting a deadline for opposing the Clarksdale Sale Motion was entered April 25, 2019 (Docket No. 969). Pursuant to the Clarksdale Assumption and Cure Notice, any objections to the Clarksdale Sale Motion or the cure amounts noted on Exhibit 1 to the Clarksdale Assumption and Cure Notice must be filed not later than May 3, 2019.

2. MEDHOST does not oppose the sale of the Clarksdale Assets to the proposed purchaser, Community Health Systems, Inc. (“CHS”). However, because the proposed sale of the Clarksdale Assets to CHS cannot be closed upon the terms and conditions proposed by the Debtors with respect to the MEDHOST Agreements (defined below), MEDHOST objects to the Clarksdale Sale Motion. MEDHOST further objects to the cure amount scheduled on Exhibit 1 to the Clarksdale Assumption and Cure Notice.

3. Under date of July 7, 2015, MEDHOST of Tennessee, Inc. entered into that certain SOFTWARE LICENSE AND APPLICATION SERVICES AGREEMENT with Curae Health, Inc. (“Curae Health”). Thereby, Curae Health obtained the rights to use at certain “Licensed Sites,” as defined therein, MEDHOST’s Enterprise software, which is the primary electronic health record software in which most core hospital operations - both financial and clinical – function. By amendment dated November 1, 2017, the Merit Health Northwest Mississippi Hospital (now known as Northwest Mississippi Regional Medical Center (the “Clarksdale Hospital”)), was added as a Licensed Site to this agreement.

4. Under date of July 7, 2015, MEDHOST Direct, Inc. entered into that certain HOSTING AND MANAGED SERVICES AGREEMENT with Curae Health, by which among other things MEDHOST hosts Curae Health’s licensed Enterprise software on servers owned and operated by MEDHOST at a MEDHOST data center. By amendment dated November 1, 2017, the Clarksdale Hospital was added as a Licensed Site under this agreement.

5. Under date of July 7, 2015, MEDHOST Cloud Services, Inc. (f/k/a YourCareUniverse, Inc.), entered into that certain MASTER PRODUCTS AND SERVICES AGREEMENT with Curae Health, pursuant to which Curae Health receives certain cloud-based and/or SaaS services, such as the operation of Curae Health’s patient portal.

6. Collectively, the agreements described in numbered paragraphs 3 through 5 above shall be referred to as the “MEDHOST Agreements.” The MEDHOST Agreements are executory contracts as contemplated in 11 U.S.C. § 365. All MEDHOST Agreements include MEDHOST and Debtor Curae Health as counterparties. None of the other six (6) Debtors is a party to the MEDHOST Agreements, or any of them.

7. While, as noted, MEDHOST does not oppose the sale of the Clarksdale Assets, MEDHOST objects to the Clarksdale Sale Motion because: (a) it provides for the assumption and assignment of the MEDHOST Agreements improperly, as described below; (b) it inaccurately describes the cure amounts (as stated on Exhibit 1 to the Clarksdale Assumption and Cure Notice; (c) it improperly assumes that Debtors may sever or bifurcate the MEDHOST Agreements into separate agreements per medical facility; and (d) it fails to provide MEDHOST with adequate assurance of future performance of all obligations under the MEDHOST Agreements.

8. Exhibit 1 to the Clarksdale Assumption and Cure Notice sets forth the Debtors' listing of executory contracts to which a number of the Debtors herein may be a party. There exists no contractual relationship among any of the Curae Health affiliates and MEDHOST. The MEDHOST Agreements are between MEDHOST and Curae Health. No subsidiary of Curae Health is a party to any of the MEDHOST Agreements, though some are Licensed Sites thereunder. The MEDHOST Agreements cannot be severed without the consent of MEDHOST, and such consent has not been given. To the extent the Clarksdale Assumption and Cure Notice and/or the Clarksdale Sale Motion imply otherwise, they are inaccurate, and MEDHOST objects.

9. Further, the proposed cure amounts listed on Exhibit 1 for the MEDHOST Agreements are incorrect. The amounts listed for the two MEDHOST Agreements listed on Exhibit 1 total \$678,995.39 (YourCareUniverse, Inc. for \$0.00, and MEDHOST for \$678,995.30 = \$678,995.39). The actual cure amount required to cure all defaults under the MEDHOST Agreements, pursuant to 11 U.S.C. §365(b)(1)(A), is approximately \$3,153,129.98, plus all amounts required to compensate MEDHOST, pursuant to 11 U.S.C. §365(b)(1)(B), for its actual pecuniary losses resulting from Curae Health's defaults under the MEDHOST Agreements

(collectively, the “Cure Amount”). The MEDHOST Agreements cannot be assumed and assigned, under 11 U.S.C. § 365(b)(1), without the entire Cure Amount being paid in full, and MEDHOST objects to the Clarksdale Sale Motion and the Clarksdale Assumption and Cure Notice to the extent they attempt to allow the assumption and assignment of the MEDHOST Agreements without cure of the full Cure Amount.

10. MEDHOST further objects to the assumption and assignment of the MEDHOST Agreements because the Debtors and CHS have not complied with 11 U.S.C. § 365(b)(1)(C). The Debtors and CHS have failed to provide MEDHOST with adequate assurance of future performance of all obligations required under the MEDHOST Agreements.

11. The Clarksdale APA and the Clarksdale Assumption and Cure Notice provide that at any time within thirty (30) days after the closing date of the sale of the Clarksdale Assets, CHS may, at its sole discretion, reject any contract it has been assigned, presumably including the MEDHOST Agreements. In the event that as of the closing of the sale, the MEDHOST Agreements have not been assumed in accordance with all applicable requirements of 11 U.S.C. § 365, including but not limited to the cure of all defaults under the MEDHOST Agreements, then, in the absence of any agreement between MEDHOST and Curae Health to do otherwise, MEDHOST expects to discontinue services to the Clarksdale Hospital and provide the purchaser (CHS) with a tape of all records of the Clarksdale Hospital in the system’s native file format. Further, if, as of the date of closing, CHS has not been properly assigned the MEDHOST Agreements and complied with all cure requirements, CHS will have no valid rights to the software licenses or hosting facilities, and its access to all affected systems at the Clarksdale Hospital shall be limited to “read only” access to clinical data for patients. Such access will be only for a limited transition period. Furthermore, MEDHOST will condition any such access on

confirmation from the Court that CHS is legally entitled to access such records, and to the execution of a mutually agreeable Business Associate Agreement governing such access.

WHEREFORE, MEDHOST does not oppose the sale of the Clarksdale Hospital to CHS, the proposed purchaser. However, MEDHOST objects to the assumption and assignment of the MEDHOST Agreements for the reasons set forth above. MEDHOST further objects to the proposed Cure Amounts listed on Exhibit 1 to the Clarksdale Assumption and Cure Notice. MEDHOST further objects to the implication in the Clarksdale Sale Motion or Exhibit 1 that the Cure Amount owed to MEDHOST under the MEDHOST Agreements is somehow severable, allocable-by-location, or subject to reduction. If CHS desires to take advantage of the benefits of the MEDHOST Agreements, and conditions the closing upon the assumption and assignment thereof, the sale cannot be approved unless and until all requirements of 11 U.S.C. § 365 have been fully satisfied, including payment in full of the Cure Amount, and the Debtors' and CHS must demonstrate adequate assurance of future performance of the MEDHOST Agreements. MEDHOST does not oppose the sale of the Clarksdale Hospital to CHS, but such sale cannot be approved and consummated, and the MEDHOST Agreements cannot be assumed and assigned, under these circumstances.

Respectfully submitted this the 3rd day of May, 2019.

/s/ Thomas H. Forrester

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*Attorneys for MEDHOST of Tennessee, Inc. and its
Affiliates*

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2019, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Thomas H. Forrester

Thomas H. Forrester